DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
2101 L Street NW • Washington, DC 20037-1526
Tel (202) 785-9700 • Fax (202) 887-0689
Writer's Direct Dial: 202-828-2226
A5691.524

DOCKET FILE COPY ORIGINAL

RECEIVED

MAY - 7 1997

Federal Communications Commission
Office of Secretary

EX PARTE OR LATE FILED

May 7, 1997

BY COURIER

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

EX PARTE PRESENTATION

Re: **Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128**

Dear Mr. Caton:

Enclosed for filing in this docket is a copy of a letter to Michael K. Kellogg, on behalf of the American Public Communications Council regarding the issue of the Common Carrier Bureau's April 15, 1997 Order, DA 97-805. A copy of the enclosed letter was also hand-delivered to Mary Beth Richards, Deputy Bureau Chief, Common Carrier Bureau. I would ask that you include the enclosed letter in the record of this proceeding.

If you have any questions concerning this matter, please contact me at (202) 828-2226.

Thank you for your consideration.

Sincerely,

Albert Kramer by RFA

Albert H. Kramer

AHK/nw
Enclosure
cc: Michael Carowitz

No. of Copies rec'd 0+1
List ABCDE

598 Madison Avenue • New York, New York 10022-1614
Tel (212) 832-1900 • Fax (212) 832-0341
http://www.dsmo.com

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
2101 L Street NW • Washington, DC 20037-1526
Tel (202) 785-9700 • Fax (202) 887-0689
Writer's Direct Dial: 202-828-2226
A5691.524

May 6, 1997

BY COURIER

Michael K. Kellogg
Kellogg, Huber, Hansen, Todd & Evans
1301 K Street, N.W.
Suite 1000 West
Washington, DC 20005-3317

Re: CC Docket No. 96-128

Dear Michael:

To make sure that the RBOC Coalition has an opportunity to resolve in a timely fashion any lingering uncertainty as to the scope of the limited, conditional waiver granted in the Common Carrier Bureau's April 15, 1997 Order, DA 97-805 ("Waiver Order"), I am communicating to you what we believe is the clear meaning of the Waiver Order.

Pursuant to Paragraph 19 of the Waiver Order, the Bureau conditionally waived the deadline for local exchange carriers ("LECs") to comply with the Payphone Orders'[1] requirement that LECs must have intrastate tariffs for payphone services that satisfy the 'new services' test in order to be eligible for federal payphone compensation.

If a LEC's intrastate payphone services in effect on April 15, 1997, already satisfy the 'new services' test, then the waiver granted by the Waiver Order is not necessary.

---

1 Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Notice of Proposed Rulemaking, 11 FCC Rcd 6716 (1996), Report and Order, FCC 96-388, released September 20, 1996 ("Payphone Order"), Order on Reconsideration, FCC 96-439, released November 8, 1996 ("Reconsideration Order"). The Payphone Order and Reconsideration Order are referred to collectively as the "Payphone Orders."

598 Madison Avenue • New York, New York 10022-1614
Tel (212) 832-1900 • Fax (212) 832-0341
http://www.dsmo.com

If a LEC's intrastate payphone services in effect as of April 15, 1997, do not satisfy the new services test, then, in order to maintain its eligibility for compensation[2] effective April 15, 1997 under the Waiver Order, the LEC must make a new tariff filing, no later than May 19, 1997, in which it refiles a tariff and cost support data for all payphone services that do not already comply with the new services test. If a LEC makes such a filing, and the new tariff filing satisfies the "new services" test, then the LEC will remain eligible for compensation effective April 15, 1997, provided that (if the new rate is lower than the existing rate) it reimburses or credits its customers, from April 15, for the difference between the new rate and the existing rate.

If a LEC does not refile its payphone services tariff with cost support between April 15 and May 19, and one of its payphone services is subsequently found not to satisfy the "new services test", then under the Waiver Order the LEC does not qualify for the waiver and is not eligible for compensation until it has brought its rates into compliance with the "new services test."

If you disagree with this interpretation in any respect, please let me know.

Sincerely,

Albert Kramer by RTA

Albert H. Kramer

AHK/nw
cc: Mary Beth Richards

[2] This entire discussion assumes that a LEC is otherwise in compliance with all applicable Payphone Order requirements that have not been waived.

689455 - #RZJ01!.SAM